March 17, 2009

Rules Unit Office of General Counsel Bureau of Prisons 320 First Street, NW Washington, DC 205354

Re: Docket ID BOP-2009-0008, "Religious Beliefs and Practices: Chapel Library Materials," 74 Fed. Reg. 2913 (Jan. 16, 2009)

## To Whom It May Concern:

The American Library Association submits these comments in response to the Notice of Proposed Rulemaking entitled "Religious Beliefs and Practices: Chapel Library Materials."

Consistent with its commitment to intellectual freedom and First Amendment rights, the American Library Association supports prisoners' right to choose and read a full range of library resources for information, education, recreation, and self-improvement. In 1982, the ALA Council adopted the Resolution on Prisoners' Right to Read. The resolution affirms ALA's longstanding commitment to protecting inmates' right to read and endorses those legislative acts and administrative regulations that preserve inmates' free access to books and reading materials, consistent with the legitimate security needs of the prison.

In 2007, news reports disclosed the existence of the Standardized Chapel Library Project, a Bureau of Prisons' project which required prison chaplains to remove all books from prison chapel libraries that did not appear on a list of "approved" religious texts. ALA President Loriene Roy issued a statement criticizing the program for denying access to a broad range of books intended to help prisoners' change their lives for the better. On behalf of the ALA, she called on the BOP to halt the program and return books to the chapel libraries.

ALA thus welcomed Congress' passage of Section 214 of the Second Chance Act, which strictly limited the BOP's power to censor materials in the prison chapel library and proscribed a narrow standard for censoring materials in the chapel library that "seek to incite, promote, or otherwise suggest the commission of violence or criminal activity."

The Bureau of Prisons now proposes a new regulation regarding chapel library materials. The proposed regulation would permit materials to be excluded from the prison chapel library if it is determined that such material "could incite, promote, or otherwise suggest the commission of violence or criminal activity." The proposed regulation states that "inciting, promoting, or otherwise suggesting the commission of violence or criminal

activity" includes (but is not limited to) "advocating or fostering violence, vengeance, or hatred toward particular religious, racial, or ethnic groups" or "urging the overthrow or destruction of the United States."

The proposed regulation is inconsistent with the Second Chance Act and First Amendment guarantees that protect inmates' right to receive information and to exercise their religious freedoms. Specifically:

The proposed regulation censors materials on grounds not permitted by the Second Chance Act and burdens prisoners' First Amendment right to receive information and exercise religious freedoms.

Section 214 bars the BOP from adopting any program or project, *under any designation*, that "seeks to compile, list, or otherwise restrict prisoners' access to reading materials, audiotapes, videotapes, or any other materials made available in a chapel library" with the exception of "any materials in a chapel library that seek to incite, promote, or otherwise suggest the commission of violence or criminal activity" and "any other materials prohibited by any other law or regulation."

The proposed regulation would permit materials to be banned or removed under a far less stringent standard than that required by the Second Chance Act by allowing materials to be removed if the materials "could incite" or "could ... suggest" violence. This standard fails to distinguish materials that could be perceived as suggesting violence by depicting or discussing violent acts, and those materials that "seek to incite violence" as specified by Section 214.

The proposed regulation would permit materials to be banned or removed if the work is perceived as "[a]dvocating or fostering violence, vengeance, or hatred toward particular religious, racial, or ethnic groups." Section 214 does not include this language. The grounds for removing materials from the prison chapel library should be limited to those identified and permitted by Congress.

Finally, the proposed regulation would permit materials to be banned or removed from the chapel library if the work is perceived as urging the overthrow or destruction of the United States. Not only is this standard not included in the Second Chance Act, this standard strikes at core political speech protected by the First Amendment, which protects the freedom to criticize the government, even to the point of saying that the government should not exist.

• The proposed rule fails to identify a procedure for removing materials from chapel libraries that protects against arbitrary decision making and provides for due process and full notice to prisoners and publishers alike.

Any procedure for removing a book from the prison chapel library should assure that the book is not removed for arbitrary or improper reasons. The proposed rule should be amended to require that any decision to remove materials be undertaken by high-level BOP officials in consultation with prison chaplains and professional librarians, who can best advise BOP officials on sensitive religious matters and the balance between First Amendment rights and the legitimate security needs of prisons.

In addition, the procedure for banning or removing a book from the prison chapel library should assure that prisoners and publishers receive timely and adequate notice of any proposed book removal, in order to permit them to request a full review of the decision.

The American Library Association endorses the analysis and comments filed by the ACLU Washington Legislative Office, the ACLU National Prison Project, and its partner organizations on March 17, 2009. We recommend that the BOP adopt the recommendations set forth by those organizations to remedy the deficiencies in the proposed rule.

The American Library Association

Deborah Caldwell-Stone Deputy Director, Office for Intellectual Freedom 50 East Huron Chicago, IL 60615 800-545-2433

Lynne Bradley Director, Office for Government Relations 1615 New Hampshire Ave NW, First Floor Washington, DC 20009-2520 800-941-8478